NO. 82-1127

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES
DE COLOMBIA, S. A.,
Petitioner

v.

ELIZABETH HALL, et al.,
Respondents

On Writ Of Certiorari To The Supreme Court Of Texas

BRIEF OF RESPONDENTS

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QUESTION PRESENTED

Whether the non-resident Colombian Defendant had sufficient contacts, ties and relations with Texas to make the exercise of jurisdiction fair and reasonable and inoffensive to traditional notions of fair play and substantial justice.

SUBJECT INDEX

LIST OF AUTHORITIES

CASES

MISCELLANEOUS

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STATEMENT OF THE CASE

Because the job of constructing the Petro-Peru Pipe Line was so large, Petro-Peru requested that three of the individual bidding companies re-submit a joint bid for the project. Thus, was born Williams-Sedco-Horn, a joint venture.[1] (J.A. p. 101a). Its main office and domicile was in Houston, Texas. (J.A. p. 51a; 119a-120a).

1. Williams-Sedco-Horn is a joint venture composed of Williams International Sundamericana, Ltd., a Delaware corporation headquartered in Tulsa, Oklahoma, Sedco Construction Corporation, a Texas corporation, and Horn International, Inc., a Texas corporation.

It was essential for the job to have transportation of men, material and equipment by helicopter. The management committee of Williams-Sedco-Horn discussed the feasibility of buying helicopters (J.A. 115a); leasing them or sub-contracting such work. (J.A. 120a). Representatives of Sedco and the Horn company discussed rates with another company, Petroleum Helicopters. (J.A. 109a). A Williams' representative recommended Petitioner, with whom it had previous experience. (J.A. 103a). This was a lucrative contract and Petitioner was not the only helicopter company trying to get the job. (R. 181).

The management committee, therefore, requested the Williams' representative (Littlejohn) to go to Petitioner and see what he could get them for; to see if they could get the machines; see what kind of deal he could put together; look into and get all the background on Petitioner and find out what they could furnish and let the management committee meet him face to face. (J.A. 115a).

Accordingly, Helicol's Chief Executive Officer (J.A. 56a) came to Houston[2] and met with the management committee of Williams-Sedco-Horn. There was a discussion of prices, availability, working conditions, fuel supplies and housing. (J.A. 112a). Petitioner, through its Chief Executive, guaranteed that it could have the first helicopter on the job in fifteen (15) days. (J.A. 108a; J.A. 116a). He quoted rates, (J.A. 117a), delivery dates, (J.A. 118a) and satisfied everyone he could deliver. A

2. In Petitioner's Brief, p. 4, and in the Amicus Brief of the United States, p. 2, it is erroneously stated that negotiations between Petitioner and Williams Bros. International took place in Tulsa, Oklahoma. Petitioner's Chief Executive, Mr. Restrepo, testified that he and his wife spent the night in Tulsa, but had no meeting nor negotiations about the contract with Williams-Sedco-Horn. Those negotiations took place in Houston the following day. (J.A. 73a).

vote was taken to accept the proposition from Petitioner's Chief Executive. (J.A. 118a). The parties were all represented at this meeting and shook hands on it and made the deal. (J.A. 162a).

There is no doubt that both Petitioner and Williams-Sedco-Horn reached agreement at the Houston meeting for Petitioner was performing on the contract before it was formerly executed in Peru. (J.A. 79a).

Even before the meeting in Houston, Petitioner had ties, contacts and relations in the State of Texas, evidenced by:

(1) Purchase of ships, spare parts, accessories and training from 1970 through 1973. (J.A. 135a).

(2) The helicopter which crashed was delivered to authorized representatives of Petitioner in Fort Worth, Texas, on or about April 10, 1970, following negotiations by telephone, telegram and in person in Fort Worth between Bell Helicopter and Petitioner's Chief Executive, Mr. Restrepo, and Executive Vice President, Mr. Pretelt. (J.A. 123a-124a).

(3) A $773,065.54 promissory note from Petitioner to Bell Helicopter Co. was executed on April 2, 1970. (J.A. 128a-129a).

(4) Petitioner sent its consultant to management, Jorge Gonzalez, for plant familiarization to Bell Helicopter Co. in November, 1971 in Fort Worth, Texas. (J.A. 18a; App. 106a Pets. Res. to Resp. Opp. to Pet. for Cert.).[3]

3. Although Petitioner designated for inclusion in the joint appendix all of the Interrogatories of Williams-Sedco-Horn to Helicol and Answers thereto, somehow the answer to Interrogatory No. 8 was not included. It is contained in Petitioner's Brief in Reply to Respondents' Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Texas. (pps. 105A-107A).

(5) Petitioner's Chief Executive communicated with Bell Helicopter in Fort Worth on October 19, 1974, that:

> "Operations seriously affected by lack of chains. We have obligations contracted with oil companies and cannot non-comply. Please ship immediately balance."

Mr. Restrepo was doubtful that this was related to the Williams-Sedco-Horn contract. (J.A. 89a). Work was being done at that time by Petitioner for Occidental Petroleum and Atlantic Richfield. (J.A. 89a).

(6) Mr. Restrepo notified Bell Helicopter in Fort Worth on October 24, 1974, of Petitioner's participation in a company being formed with a group of distinguished Peruvians and confirming the purchase of two Bell 205 A-1 helicopters. This business in Texas had nothing to do with the Williams-Sedco-Horn contract. (J.A. 88a).

(7) One of its officers went to Fort Worth on November 4, 1974, but Petitioner's Chief Executive did not recall if this was related to the Williams-Sedco-Horn contract as Petitioner had several people coming to the factory and back for many reasons. (J.A. 87a).

(8) Negotiations were ongoing between Petitioner and Bell Helicopter Co. for Petitioner to become a designated Bell repair facility in the country of Colombia. (J.A. 90a).

(9) Ten of its captains were sent to Fort Worth to ferry ships back to South America from 1970 thru January of 1974. (App. 105a-106a Pets. Res. to Resp. Opp. to Pet for Cert.).

Subsequent to the Houston meeting and the agreement on the contract, Petitioner's activities within Texas continued:

(1) It negotiated in Fort Worth for a lease of a Bell 214-B helicopter (J.A. 83a; J.A. 143a).

(2) Purchased during 1974 thru 1977 ships, spare parts, accessories and training at about the same level as 1970 thru 1973. (J.A. 135a).

(3) Entered into a contract with Rocky Mountain Helicopters[4] for use of a Bell 214 that was needed for the Williams-Sedco-Horn work. (J.A. 84a-85a).

(4) Arranged with and used Williams-Sedco-Horn in Houston, Texas, to pay Rocky Mountain Helicopters on Petitioner's behalf. (J.A. 86a).

(5) Sent five additional captains to Texas to fly equipment purchased at Bell Helicopter Co. back to South America. (App. 105a-106a Pets. Res. to Resp. Opp. to Pet. for Cert.).

(6) Sent seven of its personnel to Texas for training from November, 1974, thru August, 1977. (App. 107a Pets. Res. to Resp. Opp. to Pet. for Cert.).

(7) Sent Jorge Mosquera to Texas for technical consultation in 1975, 1976 and 1977 (App. 107a Pets. Resp. Opp. to Pet. for Cert.).

(8) Requested a Letter of Credit from Williams-Sedco-Horn in December of 1974. (J.A. 79a-80a).

(9) Received from Williams-Sedco-Horn $5,303,910.99 paid from First City National Bank of Houston to Petitioner's bank accounts in the Bank of America, New York City and Panama City, Panama. (R. Exhibits 11 thru 30, oral deposition of Joseph W. Branson).

(10) By Petitioner's instructions to Williams-Sedco-Horn, an additional $1,296,530.76 was paid from

4. It is not clear from the record where this contract was negotiated or executed.

First City National Bank in Houston to Rocky Mountain Helicopters at Denver, Colorado, and Provo, Utah, in satisfaction of Petitioner's contract with Rocky Mountain Helicopter. (R. Exhibits 1 thru 10, oral deposition of Joseph W. Branson).

There is no dispute that neither Respondents nor Responents' decedents were parties to the contract between Williams-Sedco-Horn and Petitioner. The contract did provide, however, for Petitioner to carry insurance, in United States dollars, to protect Respondents' decedents and Petitioner's own civil responsibilities. (J.A. 15a). Petitioner, in fact, had such coverage. (J.A. 96a).

According to Williams-Sedco-Horn's General Manager, money paid to Petitioner under the contract was paid in United States dollars to Petitioner's bank account in a U. S. bank. It was not paid in Peru because ". . . you can't have U. S. dollars in Peru." (J.A. 150a).

Petitioner's Chief Executive was familiar with the restrictions placed upon the import and export of currency from Peru and if Petitioner was paid dollars in Peru there are difficulties in getting them out. (J.A. 81a). The reason that the contract called for payment in New York or Panama was to avoid getting the money in Peru and not being able to get it out. (J.A. 82a).

Petitioner is a corporation organized under the laws of the Country of Colombia. Its principal place of business is in Bogota, Colombia. It is not disputed that Petitioner did not maintain any office in Texas, had no designated agent for service of process in Texas, was not authorized to do business in Texas, performed no heli-

copter operations in Texas, and did not recruit employees in Texas.

Additionally, the record reveals that Petitioner did no advertising in the United States; did no recruiting in the United States; had no agent for service in the United States; signed no contracts in the United States; had no employees located in the United States; maintained no records in the United States; had no officers or directors located in the United States; had no stockholders in the United States; did no work in the United States; and had no offices in the United States. (J.A. 32a; J.A. 41a; J.A. 57a).

Respondents' decedents were all hired in Houston,[5] Texas by Williams-Sedco-Horn (J.A. 154a; J.A. 162a) to work on the Petro-Peru pipe line project. They were on board one of Petitioner's helicopters when it crashed into a tree in a fog, resulting in their deaths. (J.A. 168a). All aboard were killed. (J.A. 6a).

Suit was instituted on behalf of Respondents[6] in Texas against the employer, Williams-Sedco-Horn, the manufacturer of the helicopter, Bell Helicopter Company, a division of Textron, Inc., and Petitioner.

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5. Dean C. Hall and his family were residents of the State of Arizona. Jesse Lee Lewallen and his family were residents of state of Illinois. Leonard F. Moore and his family were residents of the State of Oklahoma. Elton F. Porton and his parents and children were residents of the State of Oklahoma.

6. The Hall family's case was the first filed. Thereafter, suit was filed on behalf of the Lewallen family, the Porton family and the Moore family. The cases were consolidated for trial following denial of Petitioner's Special Appearance.
Elizabeth Hall died in Arizona on June 21, 1981.
Harve Porton died in Oklahoma on January 24, 1982.

At the trial of the case, Motions for instructed verdicts were granted to Williams-Sedco-Horn and Bell Helicopter Company as to Respondents' claims and as to Petitioner's claim vs. Bell Helicopter Company. (J.A. 167a). Williams-Sedco-Horn, as Cross-Plaintiff, was granted judgment against Petitioner in the amount of $70,000.00. (J.A. 174a). Respondents were granted judgment on July 7, 1980 against Petitioner in the amounts assessed by the jury. (J.A. 168A-174A).

Petitioner has fairly traced the case through the Appellate Courts of Texas.

SUMMARY OF ARGUMENT

In *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980), this Court re-affirmed that a state court may exercise personal jurisdiction over a non-resident Defendant only so long as there exists *minimum contacts* between the Defendant and the forum state. Minimum contacts protects the Defendant against the burdens of litigating in a distant and inconvient forum and ensures that the states do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system.

No problem of interstate federalism is involved here. Texas has no jurisdictional competition with any of its sister states and, therefore, with half of the *minimum contacts* functions removed, only the test of *fairness and reasonableness* in the light of *traditional notions of fair play and substantial justice* remains to be satisfied.

It was reasonable and fair that Petitioner was required to defend this particular suit in the light of these relevant factors enunciated in *World-Wide Volkswagen Corporation v. Woodson,* 444 U.S. 286 (1980).

1. Petitioner has contacts, ties and relations with the State of Texas.

2. Petitioner availed itself of the benefits, privileges and protection of Texas law.

3. Petitioner negotiated a contract in Texas with Respondents' Texas employer to transport Respondents and to carry insurance (in United States dollars) to protect its own civil responsibility in the event of injury to Respondents through Petitioner's fault. It is, therefore, reasonable that Petitioner anticipate being haled into Court in Texas in the event of such injury.

4. No state other than Texas could afford a forum for Respondents.

5. Respondents' interest in obtaining convenient and effective relief is apparent and is even more acute when the only alternative forum is in Peru[7] or Colombia, countries with which Respondents have absolutely no ties or contacts.

6. The most efficient resolution of this controversy was in Texas.

7. Although neither Respondents nor Respondents' decedents were citizens of Texas, they were citizens of the United States and Respondents' decedents were employed in Texas by a Texas employer. Texas has a justifiable interest in protecting the rights of United States citizens who have no other state which can protect their rights.

8. Texas has a justifiable interest in the employees of a Texas domiciliary even though they be from out-of-state.

9. The inconvenience to Petitioner in defending this case away from its home or principal place of

7. Petitioner still faces the *inconvenience* of defending away from its home if the country of Peru was the forum.

business when viewed in the light of all of the relevant factors is neither unfair nor unreasonable.

ARGUMENT

I.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT BAR THE EXERCISE OF IN PERSONAM JURISDICTION OVER PETITIONER FOR CONTACTS WITH THE STATE OF TEXAS ARE SUBSTANTIAL AND CONTINUOUS AND MEET MINIMUM CONTACTS REQUIREMENTS.

Since *International Shoe Co. v. Washington,* 326 U.S. 310 (1945) the threshold question in cases of this nature is that of minimum contacts, without which no power or right exists to justify any state in exercising jurisdiction over a non-resident Defendant. The absence of ties, contacts or relations between the non-resident and the forum state is an absolute bar to jurisdiction. *World-Wide Volkswagen Corporation v. Woodson,* 444 U.S. 286, 299 (1980); (no contacts, ties or relations); *Shaffer v. Heitner,* 433 U.S. 186, 216 (1977) (Defendants simply had nothing to do with the forum state); *Rush v. Sanchuk,* 444 U.S. 320, 332 (1980), (no contacts).

The amount and kind of activities carried on by Petitioner within the State of Texas were substantial and continuous and proof of such established *minimum contacts* in keeping with the holdings of this Court in *International Shoe Company v. Washington,* 326 U.S. 310 (1945), and *Perkins v. Benguet Consolidated Mining Company,* 342 U.S. 437 (1952).

II.

REGULAR PURCHASES BY A NON-RESIDENT WITHIN THE FORUM STATE ARE RELEVANT TO THE QUESTION OF MINIMUM CONTACTS AND AFFILIATING CIRCUMSTANCES.

No court has ever ruled that purchases by a non-resident within the forum state are of no significance, nor that such should be ignored as irrelevant in examining the quantity and quality of contacts or affiliating circumstances. The Court in *International Shoe*, p. 313, noted that no contracts for purchase of merchandise were involved in the State of Washington.

Rosenberg Brothers & Company v. Curtis Brown Company, 260 U.S. 516 (1923) stood for the proposition that purchases of goods by officers of a foreign corporation did not warrant the inference that the corporation was *present* within the jurisdiction of the state.

In *Henry R. Jahn & Son, Inc. v. Superior Court*, 49 Cal. 2d 855, 323 P.2d 437 (1958), the non-resident Defendant maintained that its purchase of goods on a regular basis did not make it amenable to suit in California, invoking *Rosenberg Brothers & Company v. Curtis Brown Company*, 260 U.S. 516 (1923). That court stated:

> "The United States Supreme Court, however, has advanced beyond the present theory of jurisdiction underlying that case. *McGee v. International Life Insurance Company*, 355 U.S. 290, 78 Sup. Ct. 199, 200, 2 L.Ed.2d 223; See also, *International Shoe Company v. Washington*, 326 U.S. 310, 316-317, 66 Sup. Ct. 154. . . . Since there is no distinction for jurisdictional purposes between regular selling

> and regular buying (citing cases), the *Rosenberg case* is as obsolete for the one as for the other. Many cases anteceding the *Rosenberg case* and many since the *International Shoe case* have sustained jurisdiction on the basis of Defendant's purchasing activities in the state. (citing cases)."

Regardless of the importance, quality or significance to be attached to the purchase of goods, equipment and training in the forum state, such matters should be considered in the overall view of *those affiliating circumstances* that are a necessary predicate to the exercise of state court jurisdiction of which Mr. Justice White wrote in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980).

Petitioner cites *Tillay v. Idaho Power Company*, 425 Fed. Supp. 376 (E.D. Washington 1976). There, Defendants only contact with the forum state was its annual interstate purchase of approximately four percent of the equipment used on construction of new generation and transmission facilities[8] and such purchases were deemed *incidental* to its primary activity of generating and selling electricity.

Here, Petitioner was not purchasing equipment with which to build helicopters. It was purchasing helicopters. Eighty percent of Petitioner's entire fleet was bought in Texas; received in Texas by its agents; some of whom were trained in Texas; presumably fueled and serviced in Texas; then flown through Texas air space enroute

8. In addition to Defendant's purchases, it was also a member of the Intercompany Pool. The Pool was little more than a conduit for information and had no power to conduct sales or transact other business for its members, nor could it be characterized as Defendant's agent.

to South America. Petitioner's only purchases which could properly be deemed *incidental* are the parts it regularly bought in Texas.

Additionally, Petitioner bought and paid for maintenance training.[9] This activity in Texas was important and qualitative, since it not only served Petitioner insofar as its own fleet is concerned, but served as an obvious stepping stone to its becoming a designated Bell Helicopter repair facility for the Country of Colombia.

The Judge, in *Tillay v. Idaho Power Company*, supra, did not ignore the Defendant's purchases in the State of Washington, but held that its involvement in the intercompany pool, even when coupled with Defendant's Washington purchases, while close, was insufficient connection with Washington to justify general jurisdiction in an unrelated cause of action.

Petitioner's contacts within the State of Texas also included negotiating for helicopter leasing (J.A. 83a; J.A. 143a); negotiating the contract with Williams-Sedco-Horn in Houston (J.A. 108a, 116a-118a) utilizing that company to make payments from Houston to pay off Petitioner's obligations on its contract with Rock Mountain Helicopters (J.A. 86a) and requesting a letter of credit from Williams-Sedco-Horn in Houston (J.A. 79a-80a).

If it is the concern of the Solicitor General that a holding for Respondents here will cause foreign companies to refrain from purchasing in the United States

9. While the training of pilots may well have been included in the purchase price of helicopters (J.A. 94a-95a), the maintenance training was not. (J.A. 95a; J.A. 135a).

for fear of exposure to general jurisdiction on unrelated causes of action, such concern is not well founded.

Respondents' cause is not dependent on a ruling that mere purchases in a state, together with incidental training for operating and maintaining the merchandise purchased can constitute the ties, contacts and relations necessary to justify jurisdiction over an unrelated cause of action. However, regular purchases and training coupled with other contacts, ties and relations may form the basis for jurisdiction.

The opening statement of Ambassador William E. Brock, United States Trade Representative, was presented to a committee of the U. S. Senate and a committee of the U. S. House of Representatives. The legislature is the proper forum for the passage of laws needed to aid United States trade competitiveness. The functions of the Due Process Clause are to guarantee against inconvenient litigation and to preserve the system of interstate federalism. It does not act as a guarantor of international trade competitiveness.

III.

THAT A CAUSE OF ACTION IS ENTIRELY UNRELATED TO THE NON-RESIDENT DEFENDANT'S CONTACTS WITH THE FORUM STATE DOES NOT FORECLOSE THE ASSUMPTION OF JURISDICTION.

This Court dealt with this very issue in *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1952). It was there held that the amount and kind of activities which must be carried on by a foreign corporation in the forum state so as to make it reasonable and

just to subject the corporation to the jurisdiction of that state are to be determined in each case.

Neither this Court nor any other has held that a non-resident corporation must have a *de facto* corporate headquarters or principal place of business in the forum state to satisfy the test of reasonableness and fairness.

In *International Shoe Company v. Washington*, 326 U.S. 310 (1945), the Chief Justice wrote at page 318:

> "While it has been held in cases on which Appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity . . . there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. See *Missouri K. & T. R. Co. v. Runnels*, 225 U.S. 565; *Tauza v. Susquehanna Coal Company*, 220 N.Y. 259, 115 N.E. 915, *Cf. St. Louis S.W. R. Co. v. Alexander*, supra."

IV.

MINIMUM CONTACTS SERVE TWO RELATED BUT DISTINGUISHABLE FUNCTIONS.

Due process requires that the Plaintiff must first establish the existence of minimum contacts; then there still exists two limitations on state court jurisdiction. One is that no state may infringe upon the jurisdictional rights or power of another state under our federal system. The other, that it is fair and reasonable to require the non-resident to defend a cause away from its home. *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S.

286 (1980); *Kulko v. Superior Court of California,* 436 U.S. 84 (1978); *Perkins v. Benguet Consolidated Mining Company,* 342 U.S. 437 (1952). To make a judgment as to each of these limitations necessarily requires the court to re-examine those *minimum contacts* which are the bases for jurisdiction in the first place.

Hanson v. Denckla, 357 U.S. 235, 250 (1958), spoke to the territorial limitations on the power of the respective states. *World-Wide Volkswagen Corporation v. Woodson,* 444 U.S. 286, 292 (1980), held this limitation ensures that the states, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system.

Texas has no jurisdictional competition with any of its sister states in this case. She claims jurisdiction as a sovereign over a non-resident Defendant, which clearly has regular, systematic, quantitative and qualitative contacts which confirm affiliation between Petitioner and Texas. Therefore, the only question is the fairness and reasonableness of requiring Petitioner to defend this cause away from its home.

V.

IT IS REASONABLE AND FAIR UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE THAT PETITIONER BE SUBJECT TO THE JURISDICTION OF TEXAS. SUCH JURISDICTION DOES NOT OFFEND TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.

This matter is akin to, if not identical with, the concern of the Courts in pleas of forum non conveniens.

Judge Learned Hand, in discussing the holding of *International Shoe*, supra, made such comparison in *Kirkpatrick v. Texas & P. Ry. Co.*, (2 Cir.) 166 Fed. 2d 788 (1948);

> ". . . the Court must balance the conflicting interests involved, i.e., whether the gain to the Plaintiff in retaining the action where it was, outweighed the burden imposed on the Defendant; or vice versa. That question is certainly indistinguishable from the issue of *forum non conveniens.*"
>
> ". . . the question whether it must stand trial in the particular forum which the Plaintiff has chosen is, as we have said, identical with the plea of *forum non covneniens.*"

The nature of the incident giving rise to this litigation virtually demands an available forum where the owner/operator (Petitioner), the employer/contractor (Williams-Sedco-Horn) and the manufacturer/seller (Bell Helicopter Co.) can be joined in a single action to eliminate multiple suits and, as near as possible, inconsistent results.

Petitioner's tort occurred in Peru, but the injury and harm to Respondents occurred in the United States. The harmful effects of Petitioner's negligence were visted upon Respondents in Oklahoma, Arizona and Illinois.

Clearly, each of these states has a manifest interest in providing effective means of redress for its citizens, as did California in *McGee v. International Life Insurance Company*, 355 U.S. 220, 223 (1957), but neither Arizona nor Illinois nor Oklahoma[10] has those affiliating circumstances necessary to the exercise of state court jurisdiction.

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10. The only contact Petitioner had with Oklahoma was when Mr. Restrepo and his wife spent the night in Tulsa enroute to the Houston meeting with Williams-Sedco-Horn.

New York, Utah and Colorado have only minimal affiliation with Petitioner.[11]

Clearly, Texas is the only forum which has substantial and continuous affiliation with Petitioner. Manifestly, if Texas cannot constitutionally open its courts to Respondents, there is no forum available to them in the United States.

Although no court has yet held that jurisdiction by necessity is permissible, such has not been foreclosed. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37 (1977), appears to have left open such possibility.

Some of the forum problems facing Respondents fit this description by Professor Brilmayer in *How Contacts Count: Due Process Limitations in State Court Jurisdiction*, 1980 S.Ct. Rev. 77, p. 108.

> A necessity exception would include cases where there is no state in which Plaintiff can sue, for instance because there are several Defendants who do not all have minimum contacts with a single state. In these cases, the Plaintiffs need to be able to join all of them (so as not to risk multiple suits with possibly inconsistent results) arguably warrants constitutional recognition and thus overrides the Defendants' lack of minimum contacts.

von Mehren & Troutman, Jurisdiction to Adjudicate; A Suggested Analysis, 79 Harv. L. Rev. 1121, 1173-1174 (1966), suggest:

> Another forum of jurisdiction by necessity may also eventually emerge: the assertion of jurisdiction in

11. Petitioner had a bank account in New York City. It had a contract with Rocky Mountain Helicopters and funds were directed to Provo, Utah and Denver, Colorado on that account.

the interest of justice in those rare cases in which no forum that is appropriate under conventional standards is prepared to act.

In assessing fairness and reasonableness, these matters appear to be important to this Court:

In *International Shoe*, p. 320:

Were the contacts irregular or casual or systematic and continuous?

Did the contacts result in a large volume of interstate business?

Did the contacts make available to the non-resident the benefits and protection of the laws of the state?

Did the cause of action arise out of the non-resident's activities in the state?

In *McGee v. International Life*, p. 223:

Would the Plaintiff be placed at a severe disadvantage if jurisdiction was denied?

Would the Defendant be unconstitutionally inconvenienced in defending away from home?

In *Kulko v. California Superior Court*, pp. 97-98:

Is the Defendant's conduct and connection with the forum state such that it should reasonably anticipate being haled into Court there?

In *World-Wide Volkswagen*, p. 292:

What is the Plaintiff's interest in obtaining convenient and effective relief?

What is the forum state's interest in adjudicating the dispute?

It is held that the test of reasonableness, fair play and substantial justice cannot be mechanical or quantitative, *International Shoe;* must be determined in each case, *Perkins;* the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present, *Kulko v. Superior Court of California,* 436 U.S. 84, 92; will in an appropriate case be considered in light of other relevant factors, *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 292.

Forum shopping may be of genuine concern to the National Manufacturer's Vehicle Association, but no such luxury was available to Respondents here. That problem, like interstate federalism, simply does not exist in this case.

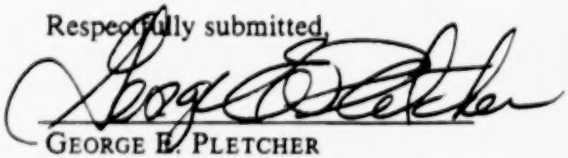
The concern that the Texas Supreme Court decision will somehow create general jurisdiction in any case where the non-resident does any significant business is groundless because of this court's repeated rulings to the effect that even though the minimum contacts rule may open the jurisdictional door, it is promptly closed again if the forum state is attempting to reach out beyond the limits imposed by its status as a co-equal sovereign in our federal system or if it is not fair and reasonable and inoffensive to traditional notions of fair play and substantial justice for such exercise of jurisdiction.

An examination of the facts and circumstances of this case and applicable rulings of this court should lead to the conclusion that the exercise of jurisdiction is proper.

CONCLUSION

For the reasons set forth above, the judgment of the Supreme Court of Texas should be affirmed.

Respectfully submitted,



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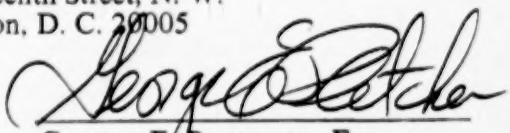
CERTIFICATE OF SERVICE

I, GEORGE E. PLETCHER, being over the age of 18 years and a member of the firm of HELM, PLETCHER & HOGAN, hereby certify that I have this 10th day of June, 1983, served three copies of the foregoing Brief for Respondents upon Petitioner, Helicopteros Nacionales De Colombia, S.A., the only party required to be served, by mailing such copies to its attorney of record in a sealed envelope, first class postage prepaid, deposited at the United States Post Office, Main Office, in Houston, Texas, and addressed as follows:

Thomas J. Whalen
Condon & Forsyth
1030 Fifteenth Street, N. W.
Washington, D. C. 20005



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